Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
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No. 85-113

In The
Supreme Court of the United States
October Term, 1985

CAROL LANDI,
Petitioner,

v.

NORMAN SUI, ET UX.,
Respondent.

On Writ of Certiorari to the Court of Appeal of California, First Appellate District

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX A

CAROL LANDI
Director, UBAN
Suite 808
El Cerrito, CA 94530

Defendant

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

NO. P42205

SUI, NORMAN and DOROTHY,

Plaintiffs,

v.

CAROL LANDI,

Defendant/s.

DEMURRER TO COMPLAINT WITH POINTS AND AUTHORITIES IN SUPPORT THEREOF.
CCP § 430.30

(Filed December 27, 1982)

NOTICE IS HEREBY GIVEN that this demurrer has been set for hearing with defendants motion to dissolve the temporary restraining order set for December 28, 1982 at 9:30 AM, or as soon thereafter as the matter can be heard in Department No. 2 in the above-entitled court located at 270 Grant Street, Palo Alto, California.

DEMURRER TO COMPLAINT

The defendant demurs to the whole complaint herein on the following grounds:

I

The court has no jurisdiction over the subject of the cause of action alleged in the complaint.

II

There is a defect or misjoinder of parties.

III

The complaint does not state facts sufficient to constitute a cause of action as more fully appears from the accompanying points and authorities.

The court will take judicial notice (Ev. 451) that the accompanying points and authorities to this demurrer are also in support of the defendants motion to dissolve the temporary restraining order granted on December 16, 1982 and set for hearing on December 28, 1982.

WHEREFORE, the defendant prays that this demurrer be sustained without leave to amend, there being no triable facts of the subject matter alleged in the complaint, that the plaintiffs take nothing by his complaint, that defendants have judgment for his costs, and for all other proper relief.

Dated: December 24, 1982.

/s/ Carol Landi

CAROL LANDI, Defendant and
Director of UBAN, California

I hereby certify that this demurrer is filed in good faith, is not filed for the purposes of delay, and in my opinion the grounds are well taken under the federal law that controls in this action.

/s/ Carol Landi
CAROL LANDI, Defendant and
Director of UBAN for California

CAROL LANDI
Director, UBAN
Suite 808
6331 Fairmount Avenue
El Cerrito, CA 94530

Defendant/s

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

NO. P42205

SUI, NORMAN and DOROTHY,

Plaintiffs,

v.

CAROL LANDI, et al,

Defendants.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER AND MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER.

INTRODUCTION

Plaintiffs in this action allege that defendants have placed a cloud on their title by recording a duly certified copy of letters of patent pursuant to Government Code § 27286 in the Official Records of the County of Santa Clara, and that said duly certified and recorded federal land patent has slandered their title by the recordation of alleged false and fraudulent letters of patent. Plaintiffs allege said declarations of land patents to be false and ficticious and ask this court to invalidate said patents and to order the County Recorder to void the documents contra to Government Code sections 27264, 27285 and 27286. This court cannot enjoin any public official from acts required by law. ***Financial Indem. Co. v. Superior Court*** (1955) 45 C2d 395, 402, 289 P2d 223.

Defendant respectfully judicially notices this court (Ev. 451) that the validity of federal land patents have been held to be exclusively valid within the terms of the Treaty of Guadalupe Hidalgo and the Law of Nations. *Moore v. Shaw and Fremont v. Flower,* 17 Cal 199. Defendant Basham is a direct descendant of William R. Basham in *Moore,* supra.

The court may also take judicial notice (Ev. 451) that the California Supreme Court unanimously held the Torrens law (land/patent registration) enacted in this State to be completely constitutional as to providing due process of law and equal protection of the laws under both state and federal constitutions. *Robinson v. Kerrigan* (1907) 151 Cal Rptr 42; *Title Document Restoration Co. v. Kerrigan* (1907) 88 P. 356. The California land registration act was repealed in 1957 for lack of use. Act of Congress (1851) is still in full effect and force.

Defendant further judicially notices the court (Ev. 451) that as late as 1955, the State Attorney General rendered an opinion in regard to the authority of Congress to grant letters of patent pursuant to the authority of Article IV, section 3, clause 2 of the United States Constitution, holding that under any circumstances, any conditions subsequent to the issuance of a grant are enforceable only by action of the United States. The opinion concluded that a grant by the federal government must be regarded as a grant *as well as a law.* 26 Ops. 100. See also *California Land Commission v. United States* (1982) 103 S. Ct. 250, 102 S. Ct. 2431. Congress holds public lands in trust for the public, and it is not for the courts to say how this trust shall be administered. *Light v. U.S.* (1911) 220 U.S. 523, 536. In view of this exclusive Congressional power, neither courts nor executive agencies can proceed

contrary to this power. *U.S. v. California* (1947) 332 U.S. 332 U.S. 19, 27. In view of this exclusive congressional authority, it is exceedingly expedient for private land owners, claiming land to which the government has an adverse claim, to settle their claim through the congressional machinery of a private bill, rather than attempt to adjudicate the controversy in the courts. Administrative remedies have been established by Congress in Title 43, USCA for private litigants. In this action, therefore, plaintiffs have wrongfully filed suit in this court. The doctrine of inconvenient forum is fully applicable to this action (CCP § 410.30). See also *Brown v. Clorox Co.* (1976) 56 CA3d 306, 128 Cal Rptr 385; *Bechtel Corp. v. Industrial Indem.* (1978) 86 CA3d 45, 150 Cal Rptr 29; and *Int'l Harvester Co. v. Superior Court* (1979) 95 CA3d 652, 157 Cal Rptr 324. Defendant will offer a nonstatutory motion to dismiss if this court determines that this court is not the proper forum for this case. See *Goodwin v. Superior Court* 1965) 63 C2d 481, 407 P2d 1.

I

THIS COURT HAS NO JURISDICTION OVER THE SUBJECT MATTER OF THE COMPLAINT HEREIN

The court must have both subject matter and in personam jurisdiction. The gravamen of the plaintiffs complaint is that there is a cloud on title by virtue of alleged "fraudulent and ficticious" land patents, therefore, the primary issue to be resolved is the validity of defendants patents. Exhaustion of administrative remedies is a prerequisite before resort to the courts. *Abelleira v. District Court of Appeal* (1941) 17 C2d 280, 293, 109 P2d 942. Patent is the highest evidence of title known to law and it is conclusive as against the government, and all persons claiming under junior patents or titles, until set aside or

annulled by a competent tribunal. *U.S. v. Stone,* 2 Wall. 525; *Stoddard v. Chambers,* 2 How. 284. It is conclusive evidence of the right of the patentee to the land described therein, not only between himself and the government, but as between himself and a third person, who has not a superior title from a paramount source of proprietorship. *Waterman v. Smith,* 12 C. 373. Pursuant to the Supremacy Clause of the United States Constitution;—"all Treaties made or which shall be made, under the authority of the United States shall be the Supreme law of the Land; *and the judges in every state shall be bound thereby;* anything in the Constitution or Laws of any State to the contrary Notwithstanding." Article VI, Sec. 2. Therefore, it is eminently clear that courts cannot look into or challenge a patent (104 U.S. 636) nor invalidate an Act of Congress. Where jurisdiction of the court as to subject matter is limited by the Constitution or Statute (Title 43, USCA), consent of the parties alone cannot confer jurisdiction. *Harrington v. Superior Court* (1924) 194 C 185, 188, 228 P. 15.

II

THERE IS A DEFECT OR MISJOINDER OF PARTIES

From the foregoing, defendant respectfully requests this court to take judicial notice (Ev. 451) that there is a defect on the face of the complaint of nonjoinder of necessary party plaintiffs. The United States is a necessary party to this action where the patent sought to be cancelled or annulled (43 USC 1166). Proceedings by the United States to annul a patent are by a bill in equity filed the the United States Attorney General or by his

order in the name of the United States. *U.S. v. Beebe*, 127 U.S. 338; *U.S. v. Hughes*, 11 U.S. 552. The defendants land patent, the substance of which is the gravamen of the complaint, sought to be cancelled, annulled or voided, is one issued by the federal government by Act of Congress thereby placing the defendants in privity with the United States. From this, it is eminently clear that the United States is a necessary party to this action seeking to rescind or void a federally granted patent. *Western Pacific RR Co. v. U.S.*, 10 U.S. 10. The only way in which a patent improperly issued can be cancelled is by the decree of a court in equity instituted by the United States for that purpose. *In re Emblem*, 161 U.S. 52, 16 *Sup. Ct.* 487, 40 L. Ed. 613; *Gilmore v. Sapp*, 100 Ill. 297; *Bradley v. Dellis Lumber Co.*, 105 Wis. 245, 81 NW 394. In bringing such a suit the government does not act in its capacity as a sovereign, but as a litigant bound by the same rules as a private citizen. *Lynch v. U.S.*, 13 Oakl. 142, 73 P. 1095. Being a federal grant, the plaintiffs have failed to join the United States as a necessary party plaintiff, and the complaint is defective on those grounds. Absence of an indispensable party deprives the court of jurisdiction over the subject matter. *So. Cal. Title Co. v. Laws*, 2 CA3d 586, 589, 83 Cal Rptr 8.

III

THE COMPLAINT DOES NOT STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION.

The complaint does not state facts sufficient to constitute a cause of action in that the complaint alleges only general conclusions and does not contain adequate factual allegations of plaintiffs rights to injunctive relief. A de-

murrer to the complaint will be sustained where a cause of action for injunctive relief is not stated. *Golden Gate Sightseeing Tours, Inc.,* (1937) 21 CA2d 582, 586, 69 P2d 899, and conclusions that might stand as a matter of pleading are not competent to justify the issuance of an injunction. *Bank of America v. Williams,* (1948) 161 C. 106, 108, 118 P. 530. The gravamen of plaintiffs complaint is that the defendants declarations of land patent put a cloud on their title, however, plaintiffs have offered no facts that they have a better or superior title to the defendants patent. Courts of equity cannot set aside, annul or correct patents or other evidence of title obtained from the United States by fraud or mistake, unless on specific averments of the alleged mistake or fraud supported by clear and satisfactory proof. Plaintiffs have not specified the fraud or mistake, but merely alleged impermissible conclusions of fact or law. The burden of proof is upon the person attacking the adversary's title. A patent is the conclusion of all the land officers, and to defeat it, a better title, and one earlier in its inception must be shown, and it must be one not tainted with fraud. *Rufus v. Robbins,* 96 U.S. 848. Plaintiffs have offered no such facts as to a better or superior title. *Moore v. Robbins,* 6 Otto 530.

CONCLUSION

The defendants possess duly certified copies of land patents issued by the United States on the parcels of land at issue, and have recorded them to perfect title to their herediments under the proper laws of this State. Gov't. Code §§ 27264, 27285 and 27286. *CAVEAT EMPTOR.* Where a party purchases an unclear title to land, he bears the risk of purchasing a false and worthless piece of paper. *INGORNATIA LEGIS NEMIN ESCUSAT.* The purchaser buys at his own peril with the possibility that the title

may turn out bad. Defendants recorded declaration of land patent stands four-square on its own. No one can take advantage of his own wrong for the law helps the vigilant, before those who sleep on their rights. If a purchaser acquiesces to an error, he is denied the right to object to it. The law of this State is that between rights otherwise equal, the earliest is preferred, that is to say, first in time is first in right. The grandfather clause is the rule of law in this action. Patent, or land grant, remains the highest evidence of title and no court may change that law without the consent of Congress by which the patent was issued. To repeal the Act of March 3, 1851 is to stand the Constitution on its head, and all state land would revert back to the trust and proprietorship of the United States. The State of California would cease to exist as a state of the union. To grant the plaintiffs, or any other such plaintiffs, without the consent of the United States as a necessary party, a temporary injunction or preliminary or permanent injunction, or even to allow this case to trial, this court acts against public and national policy, and the inalienable right to protect property which the sovereign People of this State reserved exclusively to themselves in Article I, section 1 of the Constitution of the State of California. A judgment by this court lacking jurisdiction over the subject matter of this case will be null and void, hence, subject to liabilities to the defendants. *O'Neill v. City of Lake Oswego* (9th Cir. 1981) 642 F2d 367 at 371, accord *Rankin v. Howard* (9th Cir. 1980) 633 F2d 844, 849.

Dated: December 24, 1982.

/s/ Carol Landi
CAROL LANDI, Defendant and
Director, UBAN

APPENDIX B

Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SANTA CLARA

NO. P 42205

NORMAN SUI and DOROTHY SUI,

Plaintiff,

vs.

CAROL LANDI, GLORIA R. BASHAM and UNIVERSAL BAR ASSOCIATION NATIONAL, dba UBAN and DOES 1-100, inclusive,

Defendants,

NOTICE OF OVERRULING DEMURRER AND PETITION FOR ORDER DISSOLVING TEMPORARY RESTRAINING ORDER

TO: CAROL LANDI, individually and UNIVERSAL BAR ASSOCIATION NATIONAL, also known as UBAN.

YOU ARE HEREBY NOTIFIED that the Demurrer filed by you was overruled on December 28, 1982 and your Petition for Order Dissolving Temporary Restraining Order is denied.

Dated: January 19, 1983.

MALOVOS & CHASUK, INC.

By /s/ Alfred P. Chasuk
Alfred P. Chasuk
Attorney for plaintiffs

APPENDIX C

Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SANTA CLARA

NO. P 42205

NORMAN SIU and DOROTHY SIU

Plaintiffs,

vs.

CAROL LANDI, et al.,

Defendants.

ORDER RE. PRELIMINARY INJUNCTION

(Filed January 13, 1983)

This matter came before the above entitled Court on December 28, 1982 before Hon. J. Barton Phelps; the matter having been argued, evidence submitted, and it appearing to the satisfaction of the Court that this is a proper action for preliminary injunction and that irreparable injury will result to plaintiff before the matter will be heard on its merits.

IT IS HEREBY ORDERED AND DECREED that the defendants, Carol Landi, Universal Bar Association National doing business as UBAN and its agents, servants, employees and representatives be enjoined and restrained during the pendency of this action from engaging or committing, directly or indirectly, any of the following acts:

(a) From entering the premises of the Park Drive Apartments located at 1329 Park Drive, Mountain View,

California and from going within 200 yards of said premises.

(b) From entering upon the personal residence of the plaintiffs located at 692 Rustic Way, Mountain View, California and from going within 200 yards of said premises.

(c) From entering upon the premises commonly known as 688 Willowgate, Mountain View, California and from going within 200 yards of said premises.

(d) From contacting, molesting, striking, threatening, telephoning or otherwise disturbing the peace of plaintiffs.

(e) From contacting, molesting, striking, threatening, telephoning or otherwise disturbing the peace of plaintiffs' tenants residing at the Park Drive Apartments or the 688 Willowgate Condominium.

(f) From proceeding with the unlawful detainer action #EC 82 17820 in the Municipal Court of California, County of Santa Clara, Sunnyvale Facility.

(g) From serving any legal process by any method upon the tenants of plaintiffs residing in the Park Drive Apartments and the Condominium commonly known as 668 Willowgate Street, Mountain View, California.

(h) From recording documents in the Official Records of the County of Santa Clara purporting to convey, indicate, transfer, lien or acknowledge any property ownership interest in the properties owned by the plaintiffs.

(i) From commencing or maintaining any action predicated on an ownership interest in the properties of the plaintiffs.

IT IS FURTHER ORDERED that Carol Landi is restrained and enjoined under penalty of criminal contempt from filing any other patents in Santa Clara County on any property and is further restrained and enjoined, directly or indirectly, from aiding or assisting any other person in filing any patents to disturb the title of any property in Santa Clara County.

IT IS FURTHER ORDERED and DECREED that the demurrer is overruled and the Petition for Order Dissolving the Temporary Restraining Order is denied.

IT IS FURTHER ORDERED AND DECREED that plaintiffs shall file a surety bond in the sum of $1,000 in this matter.

Dated: January 12, 1983

/s/ J. Barton Phelps
Judge of the Superior Court